

TO: Diane McDuffie
Barbara Smith
Legislative Finance Committee
FROM: John Arrigo, ENFD
DATE: February 8, 2006
SUBJECT: Information Request - Update on Goals and Objectives

LFC Information Request

Agency: DEQ

Function: Enforcement

Request: Discuss how well you are meeting each of the published goals and objectives for the listed functions for the current fiscal year. Be as specific in your response as possible. For example, what (if anything) are you measuring to determine accomplishments? Are you progressing towards goals? Have you suffered any setbacks or encountered any particular challenges? How can the legislature assist you?

Department of Environmental Quality - Enforcement Division

MISSION:

TO FACILITATE TIMELY, CONSISTENT AND APPROPRIATE ENFORCEMENT OF THE LAWS AND REGULATIONS ADMINISTERED BY DEQ.

Enforcement for 18 environmental statutes is centralized in the Enforcement Division (ENFD). Enforcement procedures are described in a written enforcement response manual. Citizen complaints and spill reports are handled by ENFD's Complaint Clearinghouse. An enforcement agreement with EPA describes commitments to "timely" and "appropriate" enforcement. Appropriate enforcement means that a penalty is typically assessed for significant violations. Criteria for what constitutes a significant violation have been written for most programs. An enforcement action is considered timely if it is initiated within 120 days. DEQ believes it is fulfilling its enforcement mission by following consistent operating procedures, and by conducting enforcement in a timely and appropriate manner. Consistency will improve even more with the implementation of HB 428 which streamlined enforcement under the reclamation laws and HB 429 which standardized penalty calculations.

GOAL:

ENSURE THAT THE PUBLIC AND THE REGULATED COMMUNITY MAINTAIN COMPLIANCE WITH MONTANA LAWS AND REGULATIONS THROUGH EFFECTIVE ENFORCEMENT.

If a person pays a penalty for a violation, they will typically return to compliance and will not repeat the violation. Therefore, enforcement is effective in returning a person to compliance.

However, it is difficult to quantify to what degree enforcement acts as a deterrent to other potential violators. A press release is issued at the conclusion of each case to publicize the fact that there are consequences for violating the environmental laws. DEQ offers compliance assistance through a variety of means including: inspections, letters, training, etc. Although some violations are accidental, many continue even though the responsible party has been notified by the DEQ that they are in violation. For enforcement to be effective in maintaining compliance, ENFD must continue to persevere and prosecute all significant violations. DEQ believes it is fulfilling its enforcement goal.

OBJECTIVES:

1. RESPOND TO SPILL REPORTS AND CITIZEN COMPLAINTS THAT ALLEGE A VIOLATION OF THE LAWS AND REGULATIONS ADMINISTERED BY DEQ TO DETERMINE IF A VIOLATION HAS OCCURRED.

Over 900 complaints and spills are reported to ENFD each year, with several hundred complaints carried over from year to year. All complaints are investigated and closed, however about 3% of the complaints are closed because of inadequate information. Approximately 61% of the complaints and spills involve minor violations that are resolved by ENFD through compliance assistance. About 1% of the violations discovered through complaint investigations result in a formal enforcement action. Around 22% of the complaints are related to permitted facilities or the failure to obtain a permit and are referred to the appropriate DEQ permit program for resolution. About 13% of the complaints relate to matters beyond DEQ's regulatory authority and are referred to outside agencies. Most investigations of citizen complaints occur over the phone through interviews or through information searches. Actual field investigations are conducted on 20% of the complaints or spills. DEQ believes it is fulfilling this enforcement objective; however, response to complaints would be more timely and effective if ENFD had additional resources to provide more compliance assistance and to conduct more field investigations.

2. RESOLVE CITIZEN COMPLAINTS AND SPILL REPORTS WITHIN 90 DAYS OF FIRST RECEIPT.

The overall average length of time necessary to close a complaint is 91.5 days. ENFD handles a variety of complaint types that require different amounts of time to resolve. For example, complaints about failing septic systems are immediately referred to county health departments, spills at oil drilling and production facilities are referred to the DNRC Oil and Gas Commission, and alleged violations within tribal boundaries are referred to the EPA. Resolution of complaints that require an action on the part of a responsible party often require more than the targeted 90 days. Examples of the types of complaints that take longer to resolve include working with a responsible party to properly dispose of solid waste or junk vehicles, verifying that the required permits or approvals are obtained, or monitoring the cleanup of petroleum spills. DEQ believes it is fulfilling this enforcement objective; however, resolution of complaints would be timelier if ENFD had additional resources.

3. IMPLEMENT TIMELY, CONSISTENT AND APPROPRIATE ENFORCEMENT FOR THE LAWS AND REGULATIONS ADMINISTERED BY THE DEPARTMENT.

As discussed under ENFD's mission statement, the Department believes it is fulfilling this enforcement objective by providing timely, consistent and appropriate enforcement.

4. ISSUE ADMINISTRATIVE ORDERS OR FILE JUDICIAL COMPLAINTS WITHIN 120 DAYS OF AN APPROVED ENFORCEMENT REQUEST.

ENFD manages 300 - 400 formal enforcement cases each year. The average length of time required to issue an enforcement action is 119 days. About half of the cases are under development at any one time, which involves the preparation of enforcement documents, penalty calculations, and settlement negotiations. The other half of the cases are active for more than one year because of the need to monitor compliance with order requirements. Most of DEQ's enforcement actions are administrative in nature and ENFD has worked to streamline the administrative enforcement process. However, if a person fails to respond to an order, then the case must be elevated to district court. District court actions consume a significant amount of legal and ENFD staff resources and take much longer than the targeted 120 days to initiate. DEQ believes it is fulfilling this enforcement objective, however processing of administrative and district court actions would be timelier if ENFD had additional resources.

5. MANAGE ENFORCEMENT CASES AND MONITOR COMPLIANCE WITH DEPARTMENT ORDERS.

Enforcement data is entered into the DEQ's CEDARS enterprise Oracle database and is used to manage complaints and enforcement cases. Timelines, actions taken by ENFD, and actions required of the responsible party are tracked and monitored. Monthly reports are generated to flag compliance action due dates. A failure to comply with a required action may result in a phone call, letter or additional enforcement. Periodic reports on complaint and case status and penalties are generated to inform DEQ management and other interested parties. DEQ believes it is fulfilling this enforcement objective, however the monitoring of compliance on long-term cases would be more effective if ENFD had additional resources.

HOW CAN THE LEGISLATURE ASSIST?

As the regulatory requirements expand, the number of violations that require enforcement will increase. DEQ anticipates an EPP request for an additional FTE to ease the workload per FTE. ENFD does not have the capability to raise fees or obtain additional federal grants funds; therefore, DEQ will request General Fund support for this new position.

If the ENFD needs information from a responsible party about a particular case, it sends a letter to request that information. If the party does not respond, DEQ has no recourse but to proceed with the available information. ENFD's enforcement activities could be more effective if the Legislature granted DEQ the authority to issue information request orders

The current statute of limitations for civil penalties is two years. Because it sometime takes more than two years after a violation occurs to issue an order or file a complaint, the authority to assess penalties for violations more than two years old expires. ENFD's enforcement activities would be more effective if the Legislature extended the statute of limitations for civil penalties for environmental violations to 5 years. Comparable federal statutes have a 5-year statute of limitations for civil penalties.